

1 **HUNT, GALE, MEERCHAUM, ORDUÑO & HOSSLER**

330 W. 24th St. - P.O. Box 2919

2 Yuma, Arizona 85366-2919

(928) 783-0101 Phone

3 (928) 783-2788 Fax

attorneys@azyumalaw.com

4 David J. Hossler- State Bar No. 003203

5 Attorney for Plaintiff

6
7
8 **IN THE UNITED STATES DISTRICT COURT**
9 **DISTRICT OF ARIZONA**

10 John Gaughan, a single man,

11 Plaintiff,

12 v.

13 The United States of America,

14 Defendants.
15

Case No.

Complaint

(Federal Tort Claims Act

28 U.S.C. §§ 2671 et seq)

16 COMES NOW the Plaintiff, by and through counsel undersigned,
17 and for his Complaint, and hereby alleges and claims as follows:

18 1. Plaintiff John Gaughan, a single man, is a resident of
19 Yuma County, State of Arizona. Plaintiff resides at 1402 W. Las
20 Lomas St., Yuma, Arizona.

21 2. This is an action arising under the Federal Tort Claims
22 Act, 28 U.S.C. §§ 2671 et seq. This Court is vested with
23 jurisdiction pursuant to 28 U.S.C. § 1346(b). Plaintiff
24 presently resides within this judicial district, and all acts and
25 omissions set out in this complaint occurred within the judicial
26 district of Yuma County, State of Arizona.

27 3. Plaintiff John Gaughan is employed as a Supply
28

1 Technician for Boreal Aviation, Inc., formerly known as Seair
2 Transport Services, Inc., a private contractor for the Laguna
3 Army Airfield, Yuma Proving Grounds, Arizona. As a supply
4 technician, Mr. Gaughan requests maintenance repair parts and
5 supplies from the government.

6 4. In 2007, Mr. Gaughan's Project Manager was William E.
7 Malo. Mr. Malo resigned from his position as Project Manager
8 some time in 2007. After Mr. Malo resigned, it is believed an
9 investigation was being conducted into Mr. Malo's activities as
10 Project Manager.

11 5. Mr. Gaughan was not aware of the investigation being
12 conducted upon Mr. Malo's activities. Mr. Gaughan became aware
13 of the investigation on June 10, 2009. It is further believed
14 that this investigation into Mr. Malo's activities is a
15 continuing process. Status of the investigation, to date, is
16 unknown.

17 6. On or about December 17, 2008, Plaintiff Gaughan
18 received a telephone call at his work station at the Laguna Army
19 Airfield, Yuma Proving Grounds. The caller identified himself as
20 Federal Bureau of Investigations (F.B.I.) Special Agent Matthew
21 Alexander. Agent Alexander stated he wanted to ask Mr. Gaughan
22 some questions regarding his former project manager, Bill Malo.
23 Mr. Gaughan agreed, and Agent Alexander asked if he could meet
24 with Mr. Gaughan in person that very afternoon. Mr. Gaughan
25 informed Agent Alexander he was unable to meet that afternoon as
26 he was having to work at the Marine Corps Air Station Yuma to
27

1 fuel aircraft in support of the Desert Talon exercise. Agent
2 Alexander asked if he could meet with Mr. Gaughan the next
3 afternoon, but again, Mr. Gaughan had work obligations. However,
4 Mr. Gaughan stated he could meet that morning but Agent Alexander
5 stated he was unavailable. Mr. Gaughan suggested meeting the
6 following week, but Agent Alexander stated he was going on
7 vacation. Agent Alexander stated they would meet sometime after
8 the New Year.

9 7. Based upon the conversation on December 17, 2008, Mr.
10 Gaughan believed Agent Alexander was going to ask some routine
11 questions about Mr. Malo's job activities. The conversation at
12 the time was friendly and courteous, and Mr. Gaughan was not
13 concerned about the future questioning session.

14 8. Soon after the new year passed, Mr. Gaughan assumed he
15 would be contacted by Agent Alexander in January or February of
16 2009. Mr. Gaughan was never contacted. Because he was not
17 contacted soon after the new year, Mr. Gaughan assumed Agent
18 Alexander was not interested in speaking with Mr. Gaughan
19 anymore.

20 9. On or about June 10, 2009 at approximately 4:40 p.m.,
21 Plaintiff Gaughan received a call in his work area from Susan
22 Arguelles, a Seair Transport secretary. Ms. Arguelles instructed
23 Mr. Gaughan to report to the front office. Ms. Arguelles did not
24 divulge any further information as to why Mr. Gaughan needed to
25 report to the front office. Mr. Gaughan assumed that either Ms.
26 Arguelles or his boss, John Moskal, wanted to speak to him about
27

1 routine employment matters, and so he proceeded to the front
2 office as asked.

3 10. Upon arriving at the front office, Mr. Gaughan noticed
4 Ms. Arguelles was speaking to someone, and assumed she was
5 speaking to his boss, Mr. Moskal. Once Ms. Arguelles left the
6 office and closed the door, however, Mr. Gaughan was surprised to
7 find a man in Mr. Moskal's office. The man was not his boss.
8 Ms. Arguelles did not introduce Mr. Gaughan to this man, but she
9 hurriedly left the office and locked the door. The man soon
10 identified himself as F.B.I. Special Agent Matthew G. Alexander.
11 Immediately, Agent Alexander appeared hostile as he flashed his
12 badge at Mr. Gaughan and did not offer to shake his hand to
13 introduce himself. Mr. Gaughan immediately began to feel
14 intimidated and threatened by Agent Alexander's demeanor.

15 11. Agent Alexander motioned for Mr. Gaughan to sit in
16 some pre-arranged chairs located in the office. The chairs were
17 arranged so they were facing directly toward each other without a
18 table or other object separating them in between.

19 12. As soon as Plaintiff Gaughan sat down, Agent
20 Alexander stated "you know why I am here, don't you." Agent
21 Alexander's tone was threatening to Mr. Gaughan because he had
22 never personally met Agent Alexander. In addition, Mr. Gaughan
23 had completely forgotten about his prior conversation with the
24 Agent, and at that moment, he had no idea as to why Agent
25 Alexander was there. Agent Alexander never contacted Mr. Gaughan
26 after the new year, nor was Mr. Gaughan previously informed about
27

1 any meeting with Agent Alexander. Mr. Gaughan replied saying he
2 did not know why the Agent was there. Mr. Gaughan immediately
3 began to feel threatened as if he had done something wrong.

4 13. Agent Alexander informed Mr. Gaughan that he was
5 investigating Mr. Malo and began asking Mr. Gaughan questions
6 about Mr. Malo's activities. The first line of questioning
7 concerned Mr. Gaughan's responsibilities as a Supply Technician.
8 During the questioning, Mr. Gaughan became very intimidated by
9 Agent Alexander's demeanor, believing the Agent was purposely not
10 allowing him to properly answer the questions in a clear or
11 detailed manner. Agent Alexander made Mr. Gaughan feel guilty
12 and frightened for no reason.

13 14. Agent Alexander then questioned Mr. Gaughan about
14 repair parts. The Agent first asked if Mr. Gaughan ever turned
15 in repair parts, and Mr. Gaughan answered that he had as it was a
16 part of his duties, and explained the process by which he returns
17 repair parts. Agent Alexander then asked if Mr. Gaughan was
18 aware that Mr. Malo had bought repair parts from other sources
19 and returned them to YPG for credit. Mr. Gaughan answered that
20 he was not aware of Mr. Malo's activities.

21 15. Agent Alexander continued to question Mr. Gaughan
22 about repair parts located in a gray trailer. Mr. Gaughan had no
23 knowledge about these repair parts and informed the Agent that he
24 did not have a key to access the trailer. The Agent asked Mr.
25 Gaughan if he had ever seen Mr. Malo with repair parts. Mr.
26 Gaughan answered that he had not. It was at this point that
27
28

1 Agent Alexander became more intense and began to ridicule Mr.
2 Gaughan by laughing and making sarcastic statements about Mr.
3 Gaughan's "supposed" lack of knowledge about Mr. Malo's
4 activities. The Agent said to Mr. Gaughan "you mean, *you never*
5 saw Mr. Malo with repair parts?" The Agent's tone was hostile,
6 and made Mr. Gaughan feel as though he was lying (even though he
7 was not).

8 16. Agent Alexander continued to intimidate and pressure
9 Mr. Gaughan even more by making comments about how it was a
10 felony to lie to the Agent, and that Mr. Gaughan needed to "say
11 the right thing." The Agent's questioning escalated to the
12 point that he began to question Mr. Gaughan's truthfulness and
13 asked Mr. Gaughan if he would submit to a lie detector test.
14 Because the "interrogation" was so hostile, and not knowing if he
15 himself was under investigation, Mr. Gaughan declined to submit
16 to a lie detector test despite knowing he had done nothing wrong.

17 17. The interrogation of Mr. Gaughan ended at approximately
18 5:15 p.m., and Mr. Gaughan realized that he had been forced to
19 stay after-hours for the purposes of this interrogation. Mr.
20 Gaughan was so intimidated and nervous that he began to believe
21 he had done something wrong and was under investigation as well.
22 Agent Alexander, however, did not tell Mr. Gaughan whether or not
23 he was under investigation, or whether he had any rights
24 regarding this investigation. However, based upon Agent
25 Alexander's demeanor, hostility and outrageous behavior, Mr.
26 Gaughan believed that he was under investigation. Mr. Gaughan
27
28

1 was mentally and physically exhausted due to the questioning and
2 asked if the investigation could continue the next day. The
3 Agent informed Mr. Gaughan he had enough information and would
4 not require another day of questioning.

5 18. After the interrogation, Mr. Gaughan remained
6 frightened and anxious. Mr. Gaughan was upset that Agent
7 Alexander did not contact him prior to the purported "meeting",
8 and felt his rights had been violated. As a result, Mr. Gaughan
9 wrote a letter to the Civil Rights and Civil Liberties Complaints
10 of the Office of the Inspector General. See Exhibit 1 attached
11 hereto and incorporated herein by reference. Mr. Gaughan was
12 requesting information as to why he had been interrogated, as he
13 feared that he may have done something wrong. Mr. Gaughan did
14 not receive an immediate response.

15 19. Since the interrogation, Mr. Gaughan has suffered from
16 a nervous and frightened state of mind and severe emotional
17 distress. Mr. Gaughan was traumatized by the experience and
18 suffers from anxiety as he was made to feel as if he incriminated
19 himself, even though he was not under investigation and had not
20 done anything wrong. Mr. Gaughan is constantly on guard at work
21 as he fears other surprise interrogations.

22 20. Mr. Gaughan now finds it difficult to focus at work as
23 he is constantly in fear of being subjected to another surprise
24 interrogation, or being implicated in the investigation of Mr.
25 Malo. In addition, Mr. Gaughan has difficulty sleeping at night
26
27
28

1 due to his paranoia and anxiety. Mr. Gaughan is also suffering
2 from depression as a result of the interrogation.

3 21. On or about November 19, 2009, Mr. Gaughan received
4 correspondence from the U.S. Department of Justice regarding Mr.
5 Gaughan's complaint filed on August 8, 2009. See Exhibit 2
6 attached hereto and incorporated herein by reference. The letter
7 addressed Mr. Gaughan's claim about providing false and
8 incriminating information to Agent Alexander. See *id.* Receipt
9 of this letter exacerbated Mr. Gaughan's anxiety and paranoia as
10 it remained unknown whether another surprise interrogation would
11 occur.

12 22. Mr. Gaughan has received treatment from a counselor
13 regarding this interrogation incident. The counselor recommended
14 breathing exercises, as well as acupuncture treatments and
15 massage therapy to help with the stress and anxiety. In
16 addition, Mr. Gaughan is receiving treatment from Dr. Ashley
17 Hart, a licensed psychologist specializing in trauma and post
18 traumatic stress disorder, and Dr. Martinez-Celaya, a
19 psychiatrist.

20 23. The condition from which Plaintiff suffers and the
21 injury thereto was caused by the actions of Agent Alexander due
22 to his outrageous interrogation behavior that terrified Mr.
23 Gaughan, causing him emotional distress. This emotional distress
24 became even more intense when Mr. Gaughan received the letter
25 from the FBI acknowledging that he provided false and
26 incriminating information to Agent Alexander. See *id.* The
27

1 emotional distress has manifested itself into physical injuries
2 from which Plaintiff continues to suffer.

3 24. Prior to the surprise meeting, Agent Alexander
4 contacted Mr. Gaughan and established a feeling of trust. Mr.
5 Gaughan did not originally fear meeting with the Agent as the
6 Agent informed Mr. Gaughan that he wanted to discuss the
7 circumstances surround Mr. Gaughan's former supervisor, Bill
8 Malo.

9 25. The surprise meeting on June 10, 2009 left Mr. Gaughan
10 feeling attacked and helpless, as though he was being implicated
11 in the Bill Malo investigation. Agent Alexander's mannerisms and
12 sarcasm frightened Mr. Gaughan, leaving him feeling anxious and
13 scared.

14 26. The follow-up letter of November 19, 2009 further
15 exacerbated Mr. Gaughan's anxiety as it suggested Mr. Gaughan may
16 have provided false information. Mr. Gaughan has since believed
17 he has had to be on-guard as he constantly worries he will be
18 included in the investigation of Bill Malo.

19 27. The actions of Agent Alexander were extreme and
20 outrageous as this purported "simple investigation" of Mr.
21 Gaughan was more of an interrogation. Agent Alexander questioned
22 Mr. Gaughan, mocked him and sarcastically laughed at Mr.
23 Gaughan's answers, and his mannerisms caused so much stress for
24 Mr. Gaughan even though he had no involvement with Mr. Malo's
25 alleged illegal activities. The stress inflicted upon Mr.
26 Gaughan during the interrogation lead Mr. Gaughan to answering
27

1 questions without being able to fully explain his answers. Mr.
2 Gaughan was also without representation. As a result, Mr.
3 Gaughan felt as though his answers could be misinterpreted,
4 leaving him feeling as though he somehow implicated himself in
5 Bill Malo's activities.

6 28. After Mr. Gaughan filed a complaint explaining his
7 feelings, Mr. Gaughan received a the letter from the FBI which
8 acknowledged Mr. Gaughan's belief of his "self-incrimination."
9 Even though Defendant FBI knew Mr. Gaughan was simply providing
10 information about Bill Malo and had nothing to do with Malo's
11 alleged illegal activities, the letter regarding this self-
12 incrimination further exacerbated Mr. Gaughan's fears.

13 29. Defendant Alexander's actions, coupled with Defendant
14 FBI's letter was reckless or intentional, and has thus caused Mr.
15 Gaughan severe emotional distress.

16 30. On or about June 17, 2010, a claim was filed with the
17 U.S. Department Of Justice, a department of the defendant, United
18 States of America, on behalf of plaintiff, and the claim was
19 deemed denied by the Department's inaction as of December 17,
20 2010. This suit was duly commenced within six months from the
21 denial of this claim.

22 WHEREFORE, based upon the foregoing, the Plaintiff
23 respectfully requests this Court to grant the following:

- 24 A. Damages for the injuries for the amount of \$42,000.00;
25 B. For Plaintiff's attorneys fees and costs in an amount
26 of not less than \$10,000.00;

1 C. For damages for pain and suffering for an amount to be
2 determined at trial;

3 D. For such other and further relief as the Court deems
4 just and proper.

5 DATED this 7th day of June, 2011.

6 HUNT, GALE, MEERCHAUM
7 ORDUNO & HOSSLER

8
9 /s/ David J. Hossler
10 DAVID J. HOSSLER
11 ATTORNEY FOR PLAINTIFF
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28